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IN THE

Supreme Court of the United States

OCTOBER TERM, 1932.

No. 301.

LOUIS K. LIGGETT COMPANY, a corporation, et al.,
Appellants,

against

ERNEST AMOS as Comptroller of the State of Florida, et al.,
Appellees.

APPEAL FROM THE SUPREME COURT OF FLORIDA TO THE SUPREME COURT OF THE UNITED STATES.

BRIEF FOR APPELLANT J. C. PENNEY COMPANY.

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BRIEF FOR APPELLANT J. C. PENNEY COMPANY.

This brief is presented on behalf of the appellant J. C. Penney Company.

A. *Nature of the Case.*

The case involves the constitutionality of a tax statute applying to merchants discriminating occupational license fees according to the number of stores owned and imposing a much higher tax if any stores are located in more than one county.

B. *Official Report of the Court Below.*

The majority opinion of the Supreme Court of Florida concurred in by four justices of that Court and the dis-

senting opinion of two of the justices of that Court, are contained in 141 So. Rep., pages 153 to 171.

C. *Concise Statement of the Case.*

The act involved, to wit: Chapter 15,624, Acts of 1931 of the Laws of Florida, is an occupation tax applying to merchants, requiring a license for the privilege of owning or operating a store or stores in the State of Florida, graduating in an ascending scale according to the number of stores owned, and providing an additional type of discrimination not found in any previous statutes, based solely on county lines, so that higher amounts (ranging from 50% to 25%) are required if the stores are located in different counties than if the same number of stores are located in one county.

Section 5 of the act prescribing the tax reads as follows:

> "Section 5. Every person, firm, corporation, association or copartnership opening, establishing, operating or maintaining one or more stores or mercantile establishments within this State, under the same general management, supervision or ownership, shall pay the license fee hereinafter prescribed for the privilege of opening, establishing, operating or maintaining such stores or mercantile establishments. The license fee herein prescribed shall be paid annually, and shall be in addition to the filing fee prescribed in Sections 2 and 4 of this Act.
>
> The license fees herein prescribed shall be as follows:
>
> '(1) Upon one store, the annual license fee shall be Five Dollars for each such store.
>
> (2) Upon two stores or more, but not exceeding fifteen stores, where the same are located in

any one county, the annual license fee shall be Ten Dollars for each such additional store.

(3) Upon two stores or more, but not to exceed fifteen stores, where the same are located in different counties, the annual license fee shall be Fifteen Dollars for each such additional store.

(4) Upon each store in excess of fifteen, but not to exceed thirty, when all are located in any one county, the annual license fee shall be Fifteen Dollars for each such additional store.

(5) Upon each store in excess of fifteen, but not to exceed thirty, where the same are located in different counties, the annual license fee shall be Twenty Dollars for each such additional store.

(6) Upon each store in excess of thirty, but not to exceed fifty, where all are located in any one county, the annual license fee shall be Twenty Dollars for each such additional store.

(7) Upon each store in excess of thirty, but not to exceed fifty, where the same are located in different counties, the annual license fee shall be Thirty Dollars for each such additional store.

(8) Upon each store in excess of fifty, but not to exceed seventy-five stores, where all are located in any one county, the annual license fee shall be Thirty Dollars for each such additional store.

(9) Upon each store in excess of fifty, but not to exceed seventy-five, where the same are located in different counties, the annual license fee shall be Forty Dollars for each such additional store.

(10) Upon each store in excess of seventy-five, where all are located in any one county, the annual license fee shall be Forty Dollars for each such additional store.

(11) Upon each store in excess of seventy-five, where the same are located in different counties, the annual license fee shall be Fifty Dollars for each such additional store.

In addition to the above amounts, Three Dollars for each and every One Thousand Dollars of value of stock carried in each store or for sale in such store.' "

The complainants, owners of two or more stores located in different counties, sought through their amended bill of complaint (R., pp. 2 to 76), filed in the Circuit Court of Leon County, Florida, to restrain the enforcement of the act, and to have it declared invalid because arbitrary and unconstitutional. The bill sets out facts affirmatively showing that no basis exists for discrimination or for classifying complainants' stores differently from the stores of merchants favored by the act, and particularly and in detail denied the existence of any facts or grounds of difference warranting discrimination or different classification. The appellant, J. C. Penney Company, the owner of two or more department stores located in different counties, intervened in said cause on account of its interest in the subject matter (R., pp. 89 to 97) which intervention was duly allowed by the Circuit Court (R., p. 161) and in said petition for intervention adopted the amendments of the amended bill and sought the same relief as sought by the complainants named in the amended bill.

Appellees filed a motion to dismiss the amended bill (R., p. 77), which motion was granted by the Circuit Court (R., p. 101). The case was appealed to the Su-

preme Court of Florida and there affirmed (R., pp. 148, 159); and it is from the final decree of the Supreme Court of Florida that this appeal is taken. The motion to dismiss admitted the facts set forth in the amended bill; yet the Supreme Court of Florida by its action refused to hear the complainants and the intervenors and thereby deprived them of their day in court.

Summary of Argument.

This brief is supplemental to the two other briefs presented by other appellants upon this appeal. In this brief the appellant has relied chiefly upon the factual situation, namely, upon the discrimination by county line of the tax, and upon the fact that in this appeal it is admitted that the so-called "chain store characteristics" which were found to exist in the Indiana decision (*Tax Commissioner* vs. *Jackson*, 283 U. S., 527) do not exist in Florida and that as a matter of fact it will be proven upon the trial that chain stores do not have different distinguishable taxable characteristics from the individual stores and that classification by numbers of stores in the absence of such factual differences is arbitrary and invalid. This brief has not attempted to go into the law as shown by previous decisions on similar points inasmuch as the law is fully covered in the two other briefs submitted by the appellants. This argument confines itself to the facts.

POINT I.

Discrimination by county line.

The Florida statute (R., pp. 107-108), not only imposes a graduated tax on so-called "chain stores" (as in Indiana), but in addition, it imposes from 50% to

25% additional taxes on all stores of any owner, if that owner operates stores in more than one county in Florida. This statute then not only discriminates between one store operator and operators of more than one store, but in addition goes so far as to discriminate for tax purposes between store owners who operate more than one store depending entirely on the number of counties operated in.

If a chain under this act is confined to one county, the tax commences at $10.00 per store and graduates up to $40.00 per store; if located in two or more counties the tax commences at $15.00 per store and graduates up to $50.00 per store.

If a merchant operates fifteen stores in one county, his tax is $145.00. If he operates fourteen stores in one county and one just across the line in another county, his tax is $215.00. If a merchant operates two hundred stores in one county and desires to start a new store across the county line, the opening of that new store will cost him $2,040.00 in increased tax. If a county in which a number of chain stores are established should be divided, then according to this county line discrimination the tax on each store in the old, as well as the new county, would be increased in a sum from Five to Ten Dollars per store, solely because of the county subdivision (Sub. 11 of the Act, R., p. 108).

Such a classification is so obviously arbitrary and unreasonable as to require no argument.

POINT II.

Inasmuch as for the purposes of this appeal it is admitted that in Florida there are no such differences between single store owners and multiple store owners as were found by this Court to exist in Indiana, the sole question before this Court is whether number of stores operated constitutes a basis for a valid classification. Such classification in the absence of other factors being obviously arbitrary, the appellants should be permitted to prove on a trial the truth of the allegations of the amended bill of complaint.

In this case the respondent admits there are no factual differences between so-called "chains" and other stores, such as were found by this Court to exist in the Indiana Chain Store Tax case (*Tax Commissioner* vs. *Jackson*, 283 U. S., 527). It contends that the statute of Florida is valid on its face, although the statute does not characterize or classify stores, except in so far as the ownership of one store is different from the ownership of more than one store, and by a four to two decision the Supreme Court of Florida holds that no trial is necessary to determine whether there are factual differences to sustain the classification beyond the bare ascertainment of whether there is more than one store in one ownership.

The respondent interprets the decision in the Indiana case to hold that the factual differences pointed out in this Court's opinion in that case were wholly immaterial. So confident is the respondent that this is the correct interpretation of the Indiana decision that it admits the truth of the facts alleged in this bill of complaint which categorically denies the existence in Florida of the fourteen factual differentiations between chains and other stores, about which Professor Rawls from the University of Indiana testified in that case.

The question is now presented by this record for the first time, whether on the admission that there is no difference in Florida between chain and non-chain stores, a classification based on the single test of the ownership of more than one store is valid.

Unless this Court will make it clear that the alleged facts derived from the testimony of the professor were material in the decision in the Indiana case, there never can be a thorough-going presentation of the actual facts in this political legislative fight. While such legislation is intended ostensibly to protect the small independent merchants, we submit that it actually destroys their right to unite with other small town and neighborhood merchants in order to live in competition with the large individual stores in the cities.

There has been a wholly inadequate presentation of the facts affecting a chaotic, distributive system, a system that has fallen far behind the system of production. This faulty system may be responsible for a lack of balance which is causing the difficulty economists so frequently point out between the over-production of our machine age and the inadequate facilities of our distributing devices. The facts should be understood. They have not been understood and have not been presented by the attorneys for the chains.

Apparently, from the briefs submitted in the Indiana case, the attorneys representing the taxpayer rested their case largely on the proposition of law that a classification based on the number of stores owned must be arbitrary and invalid. If the decision of the Supreme Court of Florida is upheld, the appellant will have no opportunity through competent testimony to prove the erroneous assumptions of an inexperienced witness on retailing, which must have affected the result in the Indiana case.

So we have this strange condition. In the Indiana case the attorneys for the chains assumed that no facts

were necessary to defeat a bad law. In this case, the Attorney General of Florida assumes that no facts are material in sustaining what he assumes to be a good law.

POINT III.

The Indiana chain store decision of this Court rests upon an erroneous assumption of facts.

Retailers, generally, are bewildered, not because of the abstract questions of law involved, but because of the assumed facts on which this anti-chain store legislation has been upheld are so contrary to the everyday knowledge of the retail trade. For example, it is said in the majority opinion of this Court in the Indiana case that chains are different because they have the advantages of warehousing. A very natural assumption is that warehousing is a sign of power and advantage which chains must enjoy because of their supposed volume of business. Warehouses are really the costly tools of the middleman, made more generally necessary years ago for the assemblage of merchandise from many small factories. Many chains do not use them (R., p. 42). It is obvious that before the concentration of production in big factories, merchandise had to be shipped to warehouses from small factories so as to be stored and sorted and assembled as to size, color, quality and quantity before distribution to the stores.

Obviously, since the great majority of all chains have ten stores or less per chain, they do not have sufficient volume to maintain their own warehouses (p. 11—Distribution No. R 36—United States Summary—Preliminary Causes of Distribution Report conducted by U. S. Department of Commerce).

This mistaken idea about the advantages to chains in warehousing can be exposed by a typical illustration.

Assume, which we believe to be true, that one company in North Carolina manufactures in one factory approximately 55% of all bath towels used in the United States, so that all of the customary sizes, colors and varieties are already assembled at one place. The waste of shipping towels from North Carolina to a variety of alleged chain store warehouses all over the country, only to be shipped back again over the identical routes to the stores, is obvious. Eliminating the warehouse eliminates at least one freight bill, one trucking, one handling, one interest and one insurance bill.

The tendency of the modern factory and modern store is to eliminate the warehouse entirely by the use of quick motor trucks, express, parcel post and fast freights which provide for weekly and even daily shipments direct from factory or farm to the store. Small parcels are travelling continuously, timed so that they may arrive according to the stores' needs, thus avoiding extra storing and handling costs. The modern factory is equipped to ship anywhere, any time. Many have hundreds of stalls or bins marked by state and city and the name of the customer, where goods are stored directly from the loom and cannery. They provide a continuous flow of goods to meet the orders scheduled to be sent as needed by the fastest and cheapest transportation.

It will be proved on the trial that the Professor's observations on his remaining thirteen points are no more accurate than his observations on warehousing as a characteristic advantage or difference of chain stores.

What is a chain? Merely a single Main Street store duplicated in neighboring towns or trading areas. Here and there in almost every town, an outstanding individual merchant feels the urge to expand. The only way open to him is to start another store in an adjoining small town. To that store he can take no so-called "chain" characteristics. If he is to be successful, he will merely

repeat in the neighboring town the same character of merchandising operation which he did at home in his first store. Reason rejects any other explanation of growth and success beyond the performance just stated. This simple explanation remains true whether the growth has been to six stores or to six hundred stores. Its essence throughout the period of any expansion must remain the standard of the individual merchant's performance in the first store.

Here we have a statute which provides that if small town merchants grow at all (sidewise, so to speak, from town to town, the only way small town merchants can grow), they must pay a tax which may run up to $50.00 per store, while their big city competitor regardless of growth who does all his business under one roof but who draws trade from every hamlet of the state, pays the paltry sum of Five Dollars. If a merchant grows only skyward under one roof and his gross sales and net income equal that of two thousand little country stores banded together as one operation, and even though this individual merchant has all of the superficial characteristics ascribed to chains which differentiate him from his little competitor, he is especially favored. Such a statute invites the big city merchants to add more lustre to the big city institutions at the expense of the country and small town stores by taking more trade from Main Street. Main Street was losing its business to the big cities by motor and train long before chains were important developments. Chains came (largely since 1920) to help the cooperatives, to restore trade to the small town and neighborhood trading areas, where it naturally belongs. Such statutes cripple the growth of all small stores in natural neighborhood trading areas and favors the big downtown stores of the cities.

There is no chain store entity that is a creature apart from a local store. Any so-called "chain" is merely the

sum total of a number of little stores. Some are successful. Some are not. The "chain" feature consists of the aggregate capital and surplus and net profits of a number of individual stores, less the individual losses of those stores. Each store, of course, has its own ledger accounts, as if it were a single store.

The burden of the chain store taxes must inevitably be borne by each store of the chain upon which the tax is levied and not by any general or central chain entity. The chain as an entity has no special capital, no stock of merchandise, no assets and liabilities apart from the stores. If a losing store in a chain cannot pay a chain store tax, who pays? The prosperous stores may be able to pay, the losing stores cannot; and there are always losing stores in every chain. These losing stores, even before the tax, are already on an unequal and subnormal basis, compared with the well trained army of successful independent and cooperative merchants.

Occasionally we find examples of promoters imbued with the popular idea that there is magic in so-called "chain store methods of doing business" which leads to immediate financial success. Many of the public having the same misconception supply the capital. But experience shows that chains which have been launched in this way have not been successful. The successful chains are those which have been built from the bottom up, and not from the top down. Successful chains in the last analysis are the extension of the efforts of a capable individual merchant.

It is true that chain groups of merchants having intelligent management have shown remarkable stability and ability to lower costs of merchandise to the consumer, in the same way that many individual merchants with similar intelligent management show stability and lower costs to the public. It is equally true that when there is a deviation from principles of sound merchandis-

ing, the result is disastrous, whether it be a chain or an individual merchant. It is common knowledge that during the past years many chains of this character have failed or discontinued doing business.

In the bankruptcy lists during the past two years are the names of some of the best known sources of the fallacious public impressions concerning chains. On the list is one famed because it had a reputation for using the stop-watch method of counting traffic per minute which passed a given point, thus devining the 100% locations for stores. So much "puffing" and propaganda regarding chains comes to an end but false public impressions remain.

POINT IV.

Many erroneous impressions regarding chain retailing will be corrected by the reports of "Census of Distribution," now being published by United States Department of Commerce for the first time.

The ordinary conception of chain retailing is formed naturally by everyday contacts. Those contacts create the impression that chains consist of food stores like Great Atlantic & Pacific Tea Company, Kroger, Safeway, Sanitary, First National, etc. The other conception of a chain is that it deals in five and ten cent and other low priced articles, and the familiar names of Woolworth, Kresge, Grant, Kress are suggested. Yet the food and five and ten cent store chains do but approximately forty per cent. of the chain retailing. Sixty per cent. of all chain retailing, or over Six Billion Dollars in sales, is done by comparatively small chain groups in something over 80 retail fields, including dry goods, shoes, cothing, drugs, building supplies, furniture, motor accessories, farm implements, restaurants, candy and fruit stores; in fact, almost every form of retail enter-

prise. But chains with such wide variety obviously do not compete with each other as a class, nor can they be compared with each other so as to be called a special class for tax purposes. A small fruit-juice and candy stand is a store, yet there is no difference between the tax that it must pay compared with a chain of department stores. They are all chains for the purpose of this tax which emphasizes the arbitrariness of the tax.

The names suggested above would also indicate to the casual observer that all chains are big chains, whereas,

80% of all chains operate less than 25 stores per chain;

70% of all chains operate less than 10 stores per chain;

45% of all chains operate 6 stores or less per chain.

(See p. 11, Census of Distribution, Bulletin R-36, U. S. Summary of Preliminary Census of Distribution.)

POINT V.

It being admitted for the purpose of this appeal that there are no factual differences between a single store merchant and a multiple store merchant, we submit that a classification based upon the number of roofs under which a merchant does business is arbitrary and invalid.

It is apparent that a classification based on no factual differences which has no relation to size, earnings or value of property and which imposes a far heavier burden by reason of this fact upon some merchants than upon other merchants of the same size having the same earning power, cannot be sustained. A sound statement of this fundamental principle of law is found in *People ex rel. Farrington* vs. *Mensching,* 187 N. Y., 8, in which Judge Vann, writing the opinion, said, on page 19:

> "Even if a tax on farms according to acreage might be sustained, it is obvious that a tax on farms according to the number of fields into which they are divided would not be valid. Such a classification would not treat all in the same class alike, and would impose a heavier burden upon one farm than upon another of the same size, situation and value. A statute imposing such a tax would not give 'that equal protection and security' to which all, under like circumstances, are entitled 'in the enjoyment of their personal and civil rights.' "

The passage above quoted is directly applicable to the facts before the Court on this appeal. The farm having one field represents the big department store and the farm with the same acreage having several fields represents the country merchant who with diligence and persistence has extended his operation into say six or less stores in nearby towns, the size of almost half of the chains.

POINT VI.

The effect of validating a classification based upon one method of retail distribution as against all other methods is to hamper and possibly to destroy a method made necessary by present day conditions in order to stabilize industry and help cure overproduction.

Dr. Charles A. Beard, the well known economist and historian, recently pointed out in an article published in the New Republic on November 30, 1932, the probable effects of such legislation upon the problems of stabilizing industry in this country. A copy of his article is attached to this brief as Appendix B.

We quote in part from his article:

"It may be said, to be sure, that this anarchy is a good thing, that it is in keeping with the high tension of American individualism, but we cannot eat our cake and keep it. If there is to be planning or stabilization in industry, as liberals suggest, then it must have a firm basis in rationalized distribution—at the consumer's end of the line. If planning and stabilization are illusions, of course, it is proper to press for the dissolution of every industrial corporation that has risen above the level of the village smithy and for the disruption of every retail concern that owns more than one store. The futility of the first of these operations has been demonstrated over more than forty years of industrial concentration. Will your legislatures be able to destroy by taxation large-scale operations in retail business?

There is the question for 'liberal' economists to consider. There is the issue at stake in the coming contest in the retail field. There is no doubt about the battle lines. The Supreme Court has upheld the Indiana law imposing a relatively small progressive tax on concerns having more than one store. At a recent session of the same legislature a bill was introduced imposing a tax rising from $5 on one store to $500 on each store above five in number—a tax that would put many chain stores out of business. A still more drastic bill has been devised in California by initiative petition and is in circulation—a bill which would make it impossible for any person or concern to have more than one or two stores in the state.

All this is being done under the guise of taxation. The purpose is not revenue but the destruction of multiple retail establishments. It is not claimed that they are monopolies to be dissolved as contrary to public policy. They are not denounced as insanitary and subject to the police power. They are de-

cleared to be enemies of the public—especially local retail merchants—and are to be destroyed by heavy taxation.

There is the issue and 'liberals' who speak of planning should at least be aware of the implications involved in the conflict. If other legislation against multiple retail establishments is sustained and they are to be destroyed by law, then it should be recognized that the stabilization of industry will be rendered all the more difficult. It may be that economic anarchy is to be preferred above economic planning, but there ought to be no delusions about the tendencies of public measures bearing on the subject. In any case, the matter is too complicated for a snap judgment."

CONCLUSION.

It is submitted that the decision and judgment of the Supreme Court of Florida be reversed.

Respectfully submitted,

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APPENDIX A.

Planning and Chain Stores.

By Charles A. Beard.

It is repeatedly said that the "liberals" so-called are in a constant state of confusion with respect to policies and measures, ever contradicting themselves. While the general proposition may be left to philosophers for debate, in some particulars the statement is true. Illustrations are to be found on every hand. Liberals attack the courts for "usurping" the power to pass upon the constitutionality of legislation and then in the same breath assail the courts for not striking down laws directed against freedom of opinion. They object to judicial intervention in any form and yet praise the courts for their opinions upholding statutes enacted under "progressive" auspices, apparently on the assumption that plastering the rich and powerful is a good thing whatever the rich and powerful may be doing, and that the latter must always be operating contrary to the interest of the public or retarding the advance of the ideal commonwealth.

No better illustration of this condition of mind can be found than in the chorus of approval which went up from certain liberal circles when the Supreme Court of the United States recently upheld an Indiana statute designed to hamper chain stores by taxation. It was said with much jubilation that Justice Hughes and Justice Roberts were now on the popular side and that progressive legislation may expect a better fate in the future at the hands of the Supreme Court. Yet at the very same moment liberals were flirting with the idea of planning for business as a way out of the crisis.

Here then is the contradiction. How can anyone expect to "stabilize industry" and "plan production" with-

out considering the methods and machinery by which goods are distributed, without providing economic institutions for obtaining from the merchant on the very frontiers of distribution the data for continuous forecasting in various lines, without guaranteeing stability and rationalization in retail management? The answer is obvious. Planned production without rationalized retailing is an impossibility.

The strange thing in the situation is that economists should have neglected the retail industry in projects for planning. Yet perhaps it is not so strange after all that this aspect of the subject should not have received adequate consideration. The interests of economists has been primarily in production, capital and profits—with side glimpses at labor—and not primarily in the consumer whom the whole business is supposed to serve. At all events, the processes by which the needs of the consumer can best be met, sound consumer wants stimulated and consumer demand accurately forecast have not yet had the scientific examination which they deserve. It is an interesting commentary on the present state of the art of panning that Soviet Russia has been constantly harassed by this problem and last year sent to the United States an expert charged with the duty of studying the selling phase of rationalization.

Now it happens that the people in this country who are actually attacking the problem of rationalization in retailing are the managers of chain-store concerns. These establishments have grown up from the ground, from simple beginnings in one store, and are deeply rooted in the realism of distribution at the final end of the process—supplying the ultimate consumer. They are making use of the principle of the conservation of energy —the performance of retail services with the least expenditure of energy. They make direct contacts with manufacturers and eliminate as far as possible the waste

of middlemen and warehousing which add enormously to retail prices. They introduce the blessed word "stabilization" into the troubled retail business and, what is more important, the practice of stabilization by careful management. They avoid bankruptcy even in panics—at least so long as they keep out of the clutches of investment promoters.

On the other hand, it is notorious that retail business as historically practised in the United States has been characterized by opposite attributes on a large scale. It carries on its back a heavy load of middlemen. Its course is marked by receiverships and dissolutions. According to a recent survey, at least 50 percent of the grocery stores established in an Eastern city failed before the end of the first year. It is so conducted in small towns that, with the improvement of roads and automobiles, the department stores of neighboring cities are pressing local one-man stores to the wall and disintegrating community life in many parts of the country.

The path of the retail industry is strewn with wrecks. A clerk saves a few dollars. He starts a store, with the aid of a landlord having a room to rent and some credit from wholesalers and the local bank. If all goes well, he may build up a successful business and become a pillar of local society. But in innumerable cases he does not do well, ends in bankruptcy in fact, and his goods are thrown upon the market at ruinous prices disrupting the normal flow of business in the town. And thousands of these unhappy retailers, with their ups and downs, keep producers in a fog as to the demand for their goods and hence with regard to planning their output.

It may be said, to be sure, that this anarchy is a good thing, that it is in keeping with the high tension of American individualism, but we cannot eat our cake and keep it. If there is to be planning or stabilization in

industry, as liberals suggest, then it must have a firm basis in rationalized distribution—at the consumer's end of the line. If planning and stabilization are illusions, of course, it is proper to press for the dissolution of every industrial corporation that has risen above the level of the village smithy and for the disruption of every retail concern that owns more than one store. The futility of the first of these operations has been demonstrated over more than forty years of industrial concentration. Will our legislatures be able to destroy by taxation large-scale operations in retail business?

There is the question for "liberal" economists to consider. There is the issue at stake in the coming contest in the retail field. There is no doubt about the battle lines. The Supreme Court has upheld the Indiana law imposing a relatively small progressive tax on concerns having more than one store. At a recent session of the same legislature a bill was introduced imposing a tax rising from $5 on one store to $500 on each store above five in number—a tax that would put many chain stores out of business. A still more drastic bill has been devised in California by initiative petition and is in circulation—a bill which would make it impossible for any person or concern to have more than one or two stores in the state.

All this is being done under the guise of taxation. The purpose is not revenue but the destruction of multiple retail establishments. It is not claimed that they are monopolies to be dissolved as contrary to public policy. They are not denounced as insanitary and subject to the police power. They are declared to be enemies of the public—especially local retail merchants—and are to be destroyed by heavy taxation.

There is the issue and "liberals" who speak of planning should at least be aware of the implications involved in the conflict. If other legislation against mul-

tiple retail establishments is sustained and they are to be destroyed by law, then it should be recognized that the stabilization of industry will be rendered all the more difficult. It may be that economic anarchy is to be preferred above economic planning, but there ought to be no delusions about the tendencies of public measures bearing on the subject. In any case, the matter is too complicated for a snap judgment.

(Reprinted from The New Republic, November 30, 1932 Issue.)